IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 213 of 2006

Reserved on: 17.8.2007

Date of decision: 7.9.2007

Beli Ram ... Appellant

Versus

State of H.P. … Respondent

Coram :

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting?[1] No.

For the appellant: Mr. T.S. Chauhan, Advocate.

For the respondent: Mr. Ashutosh Burathoki, Additional. Advocate General.

V.K. Ahuja , J.:

This judgment shall dispose of an appeal filed by the appellant under Section 36 B of the Narcotic Drugs and Psychotropic Substances Act, hereinafter referred to as the N.D.P.S. Act read with Section 374 Cr.P.C., against the judgment passed by the learned Sessions Judge, Mandi, vide which the appellant was convicted and sentenced under Section 20 of the N.D.P.S. Act to suffer rigorous imprisonment for three years and to pay fine of Rs.30,000/-. In case of default in the payment of fine, the appellant was to further undergo imprisonment for six months.

Briefly stated the facts of the case are that on 10.1.2003 H.C. Moti Ram alongwith H.C. Narpat Ram, constables Dhan Dev, Thakur

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[1]Whether reporters of Local Papers may be allowed to see the judgment? Yes.

Singh and constable Kuldip Singh were present at Bindrabani, check post, in connection with patrolling and traffic duty. At about 8.00 pm, a bus came from Kullu side which was stopped by the police party for routine check up and the luggage of the passengers was checked by the police. Police party found that a person was sitting at seat No. 25 who became nervous on seeing the police. H.C. Moti Ram made enquiries and gave him an option under Section 50 of the Act to get himself searched either from the Magistrate or Gazetted Officer who gave his option to be searched by the police. Thereafter, the Investigating Officer gave his personal search in presence of the witnesses and the police officials conducted the personal search of the accused and from pocket of the jacket of accused, 3 polythene packets were recovered containing Charas in stick shape. The packets were weighed and it was found to be 400 grams Charas and two samples of 25 grams each were taken. According to the procedure, the Investigating Officer completed the formalities at the spot and sent the Ruka for registration of the case on which F.I.R. was registered and after investigation, the challan was filed before the Court. The learned Sessions Judge framed charge under Section 20 of the N.D.P.S. Act against the appellant and tried him resulting in conviction and sentence as detailed above.

I have heard Mr. T.S. Chauhan, Advocate, for the appellant and Mr. Ashutosh Burathoki, learned Additional Advocate General, for the respondent and have carefully gone through the record of the case.

The first point taken by the learned counsel for the appellant was that PW7 LHC Narpat Ram, a member of the raiding party held a grudge against the appellant for which a F.I.R. was also registered and at the instance of LHC Narpat Ram, the appellant was involved in a false

case by the police party. A perusal of the record of the case shows that such suggestions were put up to the Investigating Officer PW-13 H.C. Moti Ram who denied his knowledge in this regard. A perusal of the statement of said Narpat Ram,LHC as PW-7, shows that he admitted that he was posted at Police Post Bali Cowki in March, 2001. However, he denied the suggestion that he alongwith H.C. Karam Singh falsely involved accused and one Suresh Sharma of Hamirpur in a case under Sections 353 and 186 I.P.C. on 15.3.2001. He also denied his knowledge that the said case is still pending trial in the Court of Judicial Magistrate, Chachiot at Gohar and he was one of the witnesses cited in that challan. He also stated that he does not remember whether his statement was recorded in the said case but denied the suggestion that due to aforesaid episode he turned inimical towards the accused and as such was in search of an opportunity to implicate him falsely. He denied that he had got involved the accused in this case as a result of said enmity.

A perusal of the statement of the accused recorded under Section 313 Cr.P.C. shows that he took up the plea in reply to question No. 20 that LHC Narpat Ram had got him implicated in a false case under Sections 353,332,341 I.P.C. which was pending in the Court of Judicial Magistrate Chachiot. He also tendered in evidence a copy of challan Ext. DA to show that L.H.C. Narpat Ram was cited as witness in the said case. I have gone through the copy of challan Ext. DA and a perusal of the same shows that one LHC Narpat Ram is a witness in the said case in regard to F.I.R. registered on 15.3.2001. The said Narpat Ram as PW-7 had admitted that he was posted at Bali Chowki on that date and therefore, it can be presumed that his name figures in the list of witnesses. However, a perusal of the copy of the report filed in that case

shows that the said F.I.R. was got registered at the instance of one LHC Padam Singh in which he had reported that he was posted on examination duty and when he was coming back to Bali Chowki after duty, one Suresh Kumar Bhardwaj started giving him beatings and abuses and tore his uniform and he was accompanied by other persons, namely, Beli Ram etc. He further stated that at that time Prakash Chand, Rajinder and MC Narpat Ram reached there who saved him and on this report, the case was registered. The list of the accused persons is given in Ext. DA wherein the name of Beli Ram son of Shri Shanker Dass finds mention. This clearly shows that the case was registered at the instance of one another police official and LHC Narpat Ram, PW-7 had reached there alongwith other police officials and had saved the said police official from the clutches of the accused and other persons. It is surprising that once the accused and his colleagues get themselves involved in an illegal act and gave beatings to a police official on duty and thereafter, he is saved by some other police officials, a plea is taken that he was falsely implicated at the instance of said police official who was not a complainant in that case. Thus, there is no substance in the plea of false implication raised by the appellant which cannot be accepted so as to raise any doubt in the mind of the Court that this plea may be correct.

On the other hand, the prosecution case in regard to recovery of the Charas from the possession of the appellant rests upon the statements of PW-3 HHC Kuldip Singh, PW-11 C. Dhan Dev and PW-13 H.C. Moti Ram, Investigating Officer who all have clearly stated about the recovery of the Charas from the possession of the accused. These statements have been corroborated to much extent by the statements of PW-8 Lekh Raj, conductor of the bus and PW-9 Chandramani who had

materially supported the case of the prosecution except that they had not identified the accused in case the recovery was effected from him, but the recovery memos bears their signatures which were also relied upon by the learned trial Court in coming to the conclusion that the Charas was recovered from exclusive and conscious possession of the accused. The mere fact that a police official in the discharge of his duties was a witness in one of the case registered against the appellant cannot be said to be interested in the success of the case or to falsely implicate the accused in any manner. A police official's statement has to be relied upon as that of any other witness and it cannot be disbelieved merely because of the fact that he happens to be a police official unless and until it is proved that he has some animus or ill will to falsely implicate the accused. It was the accused who has failed to prove any bias on the part of the police officials and other witnesses who have deposed against him and, therefore, this plea raised by the learned counsel for the appellant cannot be relied upon so as to hold that the prosecution case was false or cannot be relied upon. Therefore, the plea raised by the learned counsel for the appellant about the false implication falls squarely on the ground.

I have gone through the judgment of the learned trial Court and a plea was also taken in regard to non-compliance of the provisions of Section 52 of the Act as well as the provisions of Section 50 of the Act. However, the learned trial Court had referred to the option Ext. PF given to the accused as well as to the memo of consent Ext.PF/1 regarding search from the police party and had concluded on the basis of the evidence that there was due compliance of the provisions of Section 50 of the Act as well as other provisions of the Act. The findings

of the learned trial Court on any of these provisions were not challenged before this Court during the course of arguments. However, I have gone through the evidence as well as the reasoning given by the learned trial Court and there is nothing on record to show that the mandatory provisions of the N.D.P.S. Act were not complied with or judgment of the learned trial Court suffers from any infirmity.

The second point raised by the learned counsel for the appellant was that there is a Division Bench decision of this Court and according to the said decision, the quantity of the Charas recovered cannot be said to be 400 grams which was the case of the prosecution but it comes to 29.32% i.e. it comes to about 1/3rd of the recovered Charas and once it is held that Charas recovered was only 133 grams as per the reasoning given by the Division Bench of this Court, the appellant is entitled to punishment provided for small quantity.

Reliance was placed upon a decision of Division Bench of this Court in **Dharam Pal** Vs. **State of H.P.**, **Latest HLJ 2007 (HP) 827**. A perusal of this judgment shows that a question was raised before the Division Bench that in case the percentage of resin found in the content of Charas is less than the recovered Charas, the quantity of resin found can be said to be Charas and not the whole quantity recovered from possession of the accused. Accordingly, it was submitted that the sentence has to be imposed keeping in view the quantity of resin found in the total quantity of Charas recovered from the possession of the accused. A perusal of the said judgment of the Division Bench shows that a similar plea was raised before the Bench and in that case the quantity of Charas recovered was 1.600 grams, but the chemical examiner on the analysis of representative of the sample of the stuff

found that it contained only 28.92% resin and accordingly had referred to the term cannabis, charas, ganja etc. The Division Bench finally concluded that since the report of the chemical examiner shows that percentage of resin found was 28.92% and it was silent about the rest of the contents of the stuff which means that the entire quantity of the recovered stuff was not Charas. The learned Additional Advocate General appearing for the State had submitted that there are no definite finding of the chemical examiner that apart from the percentage of the resin found in the stuff, rest of it was not Charas or it contained some other substance. It was submitted on behalf of the State that there is nothing in the report to suggest that the other part of the substance recovered was mixture of gur, dhoop or some other extraneous substance which was mixed with Charas and as such, it cannot be said that only percentage of resin found in the substance recovered was Charas and not the remaining substance recovered from the possession of the accused. This question cannot be considered by this Court on the basis of the arguments raised by the learned Additional Advocate General since this question has been discussed at length by the Division Bench of this Court which had finally concluded that only the percentage of the resign found in the substance can be termed as Charas and not the remaining substance. Once there are findings of the Division Bench about this aspect, this plea is not open to be considered before this Court which is bound by the Division Bench ruling of this Court.

Applying the decision in the above case in which it was held that recovered stuff was Charas only to the extent of resin content found therein and accordingly, it has been concluded that since in the present case the resin content found was 29.32% approximately 1/3rd, it

can be concluded that the Charas recovered from the possession of the accused was 1/3rd of the total substance i.e. about 133 or 130 grams only. However, the punishment prescribed under Section 20 of the Act remains the same since in case Charas found was above 100 grams which is above small quantity since small quantity is less than that, therefore, the conviction prescribed remains the same under clause (B) i.e. for quantity less than commercial quantity but greater than small quantity and the punishment prescribed is rigorous imprisonment for ten years or fine which may extend to one lakh rupees. The punishment awarded by the learned trial Court is rigorous imprisonment for three years and fine to the extent of Rs.30,000/-.

On the point of sentence, the submissions made by the learned counsel for the appellant were that the appellant is a poor person, has not been convicted and is a first offender and since has served almost the entire sentence, the sentence imposed deserves to be reduced considerably. It was submitted by the learned counsel for the appellant that the appellant has already suffered the sentence and has been released also. A perusal of the record shows that there is nothing on record to show that he has served the full sentence. But a perusal of the record suggests that he was released on bail by an order passed by this Court on 4.8.2006 observing that he has been behind the bars since 10.1.2000 i.e. for more than 2½ years and the total sentence imposed upon him is three years and the appellant is a permanent resident of District Kullu. Therefore, he was ordered to be released on bail on furnishing personal bond and surety bond as per order passed on that date. The appellant was arrested on 10.1.2003 and was ordered to be released on 4.8.2006. No case is made out for substantive reduction in

the sentence imposed, the appellant may have undergone almost whole period of the sentence and as such, in view of the facts of the case and the quantity recovered the substantive sentence imposed upon him does not deserve to be reduced considerably.

Keeping in view the above discussion, the appeal filed by the appellant is partly accepted to this extent that the sentence awarded by the learned trial Court is reduced to the sentence already undergone by the appellant. Fine is also reduced to Rs.15,000/- and in default, rigorous imprisonment for three months.

The learned trial Court shall take steps for realization of the amount of fine, if not deposited by the appellant and in default, he shall undergo the sentence imposed by this Court. The information in regard to deposit of fine shall also be submitted to this Court as and when the fine is deposited. A copy of the judgment alongwith record be returned to the learned trial Court.

(V.K. Ahuja),
Judge

September 7, 2007
(BSS)